IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1093 OF 2004

Namdeo Nandu Bodke ...Applicant

vs.

State of Maharashtra and others ...Respondents

Mr.Vaibhav Karnik for the Applicant
Mr.S.R.Shinde,A.P.P. for State
Mr.V.Z.Kankaria for Respondent Nos.1 and 3 to 5.

CORAM: A.S.OKA,J.
DATE : DECEMBER 11,2006.

P.C.:

1. The submissions of the Advocates appearing for the parties were heard on last two dates. However, the order was not passed to enable the Advocate for the Applicant to take instructions from the Applicant.

2. This Application is preferred by the Applicant (original complainant) seeking special leave to prefer an Appeal against the Judgment and Order dated 25th September 2003 passed by the Judicial Magistrate First Class, Mask by which the Respondents were acquitted for the offences punishable under sections 402 and 409 of the Indian Penal Code.

3. The Applicant is an Architect/Engineer by profession. The first Respondent at the relevant time was the Branch Manager of Nasik Merchants' Cooperative Bank Ltd. Dhanvardhani Branch,Nasik and the second Respondent was the Chairman of the

said Bank at the relevant time. Third to fifth Respondents were the partners of M/s. Anubhav Enterprises. According to the case of the Applicant, he has entered into an agreement with third and fourth Respondents to purchase a shop on a building on Plot No.12. An agreement for sale was registered with the Sub Registrar of Assurances at Nasik. The Applicant was required to pay certain amount towards the price under the Agreement. The third and fourth Respondents were to obtain completion certificate in respect of the shop. According to the case of the Applicant, third and fourth Respondents started demanding money from him and at their instance he filed an Application for grant of loan to the Nasik Merchants' Cooperative Bank Ltd. for acquiring a shop premises. According to the Applicant third and fourth Respondents had assured him that they will do the needful for obtaining the loan and will bear the expenses for obtaining the loan. The Applicant accordingly applied for grant of loan of Rs.1,00,000/- for purchase of shop premises and Rs.50,000/- for furniture. According to the Applicant, the bank sanctioned a loan of Rs.82,000/- for the purpose of acquiring the shop and Rs.35,000/- for furniture. Necessary documents such as hypothecation deed etc. were executed by the Applicant. The Applicant was required to purchase the shares worth Rs.2,000/- of the said bank and was also required to deposit Rs.8,200/- in fixed deposit scheme of the said bank. A sum of Rs.71,800/- after deducting the said amounts from

Rs.82,000/- was credited by the bank in a current account held by the Applicant with the said bank.

4. Subsequently, there was a dispute between the Applicant and third and fourth Respondents. Therefore, the applicant issued a letter to the bank requesting the bank to cancel the loan. According to him the letter was issued by him on 29th August 1991. The bank did not reply to the said letter and he again issued a letter dated 1st October 1991 to cancel the loan. On 4th January 1992, the Manager of the bank replied to the Applicant that as payment of loan amount has already been made, the same cannot be cancelled. The grievance of the Applicant is that though he never instructed the bank to pay any amount in favour of the accused Nos.3 to 5, the bank paid a sum of Rs.62,000/- to the third and fourth Respondents by transferring the amount unauthorizedly from the account of the Applicant. That is the reason why a private complaint was filed by the Applicant against the first to fifth Respondents.

5. The learned Advocate for the Applicant submitted that without consent of the Applicant, a sum of Rs.62,000/- was withdrawn by the bank and paid to the third and fourth Respondents. He submitted that this was done without obtaining the consent of the Applicant. He submitted that a clear case of commission of offences under section 420 and 409 of the Indian Penal Code was made out.

6. I have considered the submissions. I have perused the impugned Judgment and Order and notes of evidence. There is no dispute that on the Application made by the Applicant, a loan of Rs.82,000/- was sanctioned by the Nasik Merchants' Cooperative Bank Ltd. to enable the Applicant to acquire the shop premises on the basis of the agreement executed by the third and fourth Respondents. In fact, the loan was sought on the basis of the registered agreement of sale in respect of the shop. The Applicant has not made any grievance about the fact that a sum of Rs.72,700/- was credited to his account by the bank by disbursing the loan. In fact, it an admitted position that the applicant withdrew a sum of Rs.10,000/- out of the loan amount credited to his current account. The loan was sanctioned for making payment towards the price of the shop to the third and fourth Respondents. After availing of the loan and after withdrawing a sum of Rs.10,000/- from the account, the Applicant allegedly wrote to the bank to cancel the loan. All the documents were already executed and after benefit of loan was availed of by the Applicant, it was obvious that the bank could not cancel the loan.

7. Considering the evidence on record the learned Trial Judge has taken a view that offences are not established. The view taken by the learned Trial Judge is certainly a possible view which could have been taken on the basis of evidence on

record. Even if the submissions of the Applicant are accepted, at highest it is possible to say that another view is possible. This by itself is no ground to interfere in an Appeal against acquittal. No case is made out for grant of leave. Application is rejected.

8. It is made clear that the observations made in this order are for a limited purpose of considering the prayer for grant of leave to prefer an Appeal under section 378 (4) of the Code of Criminal Procedure, 1973. Other pending proceedings, if any, will be decided independently on its own merits in accordance with law.

JUDGE